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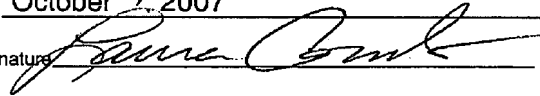
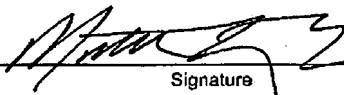
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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		67,097-023; 11106	
<b>CERTIFICATE OF FACSIMILE</b> I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>October 9, 2007</u> Signature <u></u> Typed or printed name <u>Laura Combs</u>		Application Number <u>10/786,707</u>	Filed <u>2/25/2004</u>
		First Named Inventor <u>Ma</u>	
		Art Unit <u>1723</u>	Examiner <u>Fortuna, Ana M.</u>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <u>53,154</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.</p> <p>Registration number if acting under 37 CFR 1.34 _____</p> <p> Signature <u>Matthew L. Koziarz</u> Typed or printed name <u>248 988 8360</u> Telephone number <u>October 9, 2007</u> Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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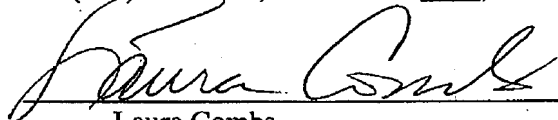
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Laura Combs

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Ellington et al.  
Serial No.: 10/786,707  
Filed: 02/25/2004  
Art Unit: 1723  
Examiner: Fortuna, Ana M.  
Title: **METHOD FOR PRODUCING A NON-POROUS  
MEMBRANE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF**

Dear Sir:

In response to the final office action mailed on 6 August 2007, Applicant respectfully submits a Pre-Appeal Brief Request for Review. This Request is filed with a Notice of Appeal. As will be explained in further detail, the review is requested for the reasons set forth below.

- I. Claims 16-19 and 21-23 were improperly rejected under 35 U.S.C. §102(b).
- II. Claims 6-14 and 24-26 were improperly rejected under 35 U.S.C. §103(a).
- III. Claim 15 was improperly rejected under 35 U.S.C. §103(a).

**ARGUMENTS****I. Rejection of claims 16-19 and §1029b)****(i) Claims 16-19 and 21-23**

Claims 16-19 and 21-23 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 98/35739 (hereafter WO 739). The WO 739 reference fails to disclose an identical

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description of the claimed invention within the meaning of §102(b). Claim 16 recites "an indistinct, seamless boundary between the first membrane layer and the second membrane layer." WO 739 fails to disclose this limitation, but the Examiner concludes based on speculation that WO 739 discloses a seamless boundary. For example, the Examiner argues that if the multi-layer membrane in WO 739 is made while the first layer is wet, a "seamless boundary" would be formed. Respectfully, the Examiner is guessing or speculating that this would occur in the WO 739 reference without any evidentiary basis, which does not constitute an identical description of the claimed invention as required by §102(b). Accordingly, there is no basis for maintaining the rejection of claims 16-19 and 21-23 and the rejection should be withdrawn.

(ii) Claim 22

Additionally, regarding claim 22, the claim recites that "the first membrane layer and a second membrane layer each include a thickness of about 1 micrometer." WO 739 does not disclose a multilayer structure wherein the layers are each about 1 micrometer thick. Indeed, WO 739 appears to suggest that multiple coatings would only be used when the thickness of a single layer exceeds 6 micrometers (see p. 3, lines 24-28). For this additional reason, claim 22 is allowable and the rejection should be withdrawn.

II. Rejection of claims 6-14 and 24-26 under §103(a)

Claims 6-14 and 24-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO 739 in view of Nemser, and alternatively in view of Bowser. The Examiner argues that WO 739 teaches a composite membrane having multiple layers and admits that the reference fails to disclose a drying step between forming the layers. The Examiner relies on Nemser or Bowser to teach this feature. However, Nemser only teaches making a single layer, not multiple layers. Therefore, Nemser cannot teach drying in between forming multiple layers. Regarding Bowser, even though multiple layers are formed, there is no teaching that the process used would achieve a seamless boundary as claimed. There is simply no suggestion to use drying before forming a subsequent layer to form a seamless boundary, as claimed. The

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Examiner is improperly using the teachings of Applicant's disclosure in hindsight to modify the base reference with Nemser or Bowser. For this reason, claims 6-14 are allowable and the rejection should be withdrawn.

Additionally, the rejection fails to establish *prima facie* obviousness. The rejection states no motivation to make a multiple layer membrane by using a drying step between formation of the layer. Even though Nemser or Bowser may teach drying for forming a single layer, these references provide no direction whatsoever of how to form a multiple layer membrane having a seamless boundary. For this additional reason, the rejection should be withdrawn.

III. Rejection of claim 15 under §103(a)

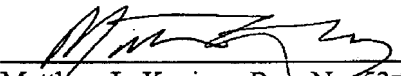
Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over WO 739 in view of Nemser, and further in view of Spadaccini or Staroselski. Applicant's response dated 18 December 2006 asserts that the Spadaccini and Staroselski references were disqualified as prior art. The Examiner has not acknowledged or even commented on the disqualification, and Applicant maintains that the references are disqualified. Accordingly, the rejection of claim 15 should be withdrawn.

CLOSING

For the above reasons, the rejection of the claims should be reversed.

Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 21-0279 in the name of United Technologies Corporation for any additional fees or credit the account for any overpayment.

Respectfully submitted,

  
Matthew L. Koziarz, Reg. No. 53,154  
Carlson, Gaskey & Olds  
400 W. Maple Road, Ste. 350  
Birmingham, MI 48009  
(248) 988-8360

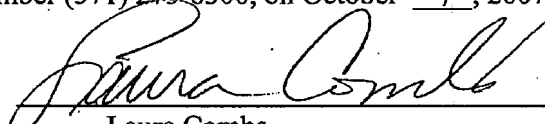
Dated: October \_\_, 2007

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